

From: Frank Jaffe
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/23/02 8:38am
Subject: Microsoft Settlement

To Renata B. Hesse,

I am writing today to indicate my personal opposition to the Proposed Final Judgement of the Anti-trust case with Microsoft, excersicing my rights as a private citizen under the Tunney Act. It is my understanding, that:

"a remedies decree in an antitrust case must seek to 'unfetter a market from anticompetitive conduct,' to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.'" Microsoft, 253 F.3d at 103 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972) and nited States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968)) (citation omitted).

The above paragraph outlines four specific requirements for the remedies:

1. unfetter a market from anticompetitive conduct
2. terminate the illegal monopoly
3. deny the defendant the fruits of its statutory violation, and
4. ensure that there remain no practices likely to result in monopolization in the future

I believe that the wording and scope of the Proposed Final Judgement fail to achieve any of these four objectives. Specifically, while I understand that the antitrust case can only address the matters which were brought before the court, the settlement, in my opinion, fails to provide an adequate remedy for Microsofts abuses in numerous ways, including:

1. There is no remedy for consumers who have been harmed by Microsofts anticompetitive practices nor is Microsoft required to give back the unfair economic gains achieved by its illegal practices
2. The proposed remedies do not adequately address the damages done to the industry by Microsoft's practices
3. The proposed remedy does not adequately prevent continuing and future misbehavior by Microsoft, and
4. The proposed remedy does not address any of the innumerable additional anticompetitive practices Microsoft has undertaken during the course of the original trial period.

I am sure that expert legal commentors will be able to provide a much more in-depth analysis of the ways in which the Proposed Final Judgement fails to achieve the above objectives. I would like to focus primarily on objective four from the quote above.

Today, as I use my Microsoft Windows 2000 PC, I observe the following behaviors which I believe constitute anticompetitive practices and illegal bundling (binding) of products, none of which appear to be adequately addressed via the proposed settlement

1. Installing a browser also forces the installation of an email package (outlook express)
2. Upgrading a browser places additional Microsoft icons on my desktop
3. Using an email package launches and additional, unrelated program (using outlook express now requires microsoft messenger be running). Microsoft Messenger is also referred to as the MSN Messenger Service, tying the use of the Messenger to the Microsoft Network.
4. Using an email package requires obtaining an email address from Microsoft (since outlook express now requires microsoft messenger, and microsoft messenger requires a passport account which results in a hotmail email account)
5. Logging into certain Microsoft owned websites requires use of a Microsoft passport
6. Windows Update function only updates device drivers and Microsoft provided software, and often "recommends" installation of additional Microsoft components.
7. Installing an operating system (Microsoft windows) forces installation of additional components exclusively from Microsoft, such as Windows Media Player. There appears to be no legitimate argument for installing non-critical multimedia components as part of an operating system or upgrade installation, yet Windows Media Player is installed, and no other parties products are offered/included/ or installed in addition or instead.
8. Microsoft has released Windows XP which contains numerous additional examples of exclusive, anticompetitive bundling of services, along with a major push for the Microsoft .NET framework which provides further opportunities for Microsoft to lock in consumers.
9. Microsoft has eliminated or reduced support and ease-of-use for certain competitive functionality such as Java
10. While virtually every other aspect of computing continues to see rapid declines in price, Microsoft has increased the price, and reduced in certain key ways (such as dual processor support) the value of Windows XP as compared to previous releases. The outrageous pricing they have applied to upgrades to Windows XP, particularly from Windows NT and 2000 products, is a clear indication to me of their further abuse of their monopoly to price their products anticompetitively.

And the above list is only the items I am aware of or have encountered today, as an end-user of a Microsoft Product.

It seems to me, based upon Microsofts continuing egregious behavior, and the terms of the proposed remedies, that these remedies completely fail to achieve every single one the four required objectives outlined above. Therefore, as I previously stated, I oppose the settlement as outlined in

the Proposed Final Judgement.

Thank you for your consideration.

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